ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



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| In the Matter of | ) | |
| | ) | |
| Request for Declaratory Ruling Regarding the Use of Section 252(i) To Opt Into Provisions Containing Non-Cost-Based Rates | ) | CC Docket No. 99-143 |

**COMMENTS OF MCI WORLDCOM, INC.**

MCI WorldCom, Inc. (MCI WorldCom), by its attorneys, hereby submits its comments in opposition to the petition for declaratory ruling filed by GTE Service Corporation (GTE).[1] GTE's request should be denied because its interpretation of the law is wrong on all counts.

## I. INTRODUCTION AND SUMMARY

GTE's petition is yet another incumbent local exchange carrier (LEC) attempt to evade its obligations to compensate competitive LECs for reciprocal compensation for the transport and termination of traffic destined to Internet service providers (ISPs). GTE's request is anticompetitive, discriminatory, and an attempt to once again circumvent its contractual obligations by seeking the refuge of Commission action.

In the instant petition, GTE seeks to use the Commission's "pick and choose" rule to avoid compliance with a provision of its interconnection agreements that GTE now contends is unfavorable. The underlying legal and policy premise of GTE's Petition is without merit. The Commission's Local Competition Order[2] was clear on both the issues of "pick and choose" and

[1] Request for Declaratory Ruling Regarding the Use of Section 252(i) to Opt Into Provisions Containing Non-Cost-Based Rates, filed April 13, 1999 ("Petition").

[2] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 16140, ¶ 1317 (rel. Aug. 8,1996) (subsequent

the assessment of rates for reciprocal compensation, thus making a declaratory ruling unnecessary. Section 252(i) of the Telecommunications Act of 1996 (1996 Act) and the Commission's implementing rules afford requesting LECs the right to avail themselves of particular provisions or entire interconnection agreements existing between the incumbent LECs and other carriers. The Supreme Court affirmed the Commission's rules implementing section 252(i).[3] GTE has it wrong. The approved standard for picking a provision or interconnection agreement is not whether a particular interconnection, service or element is cost-based, as GTE claims, but whether the incumbent LEC's costs of providing a particular interconnection, service or element available would be greater for the requesting carrier than it was for the original carrier.[4]

By virtue of the 1996 Act, the Commission's Rule and the Supreme Court's Decision, GTE is required to provide requesting carriers with any interconnection, service or network element arrangement contained in any state-approved interconnection agreement, on the same rates, terms and conditions — without unreasonable delay. That is the law. GTE's attempts to deny the rights of competitive LECs to be compensated for reciprocal compensation have already been resolved by the Commission and most state commissions. GTE cannot refuse to honor statutory mandates simply because it is unhappy with the interpretation of particular provisions by regulatory authorities. As we see it, GTE requests that this Commission sanction its breach of contract because GTE lost its claims in other fora.

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history omitted).

[3] AT&T Corp., et al. v. Iowa Utils. Bd. et al., 119 S. Ct. 721 (1999) (Decision).

[4] Local Competition Order, ¶ 1317.

## II. THE ENTIRE PREMISE OF GTE'S PETITION IS FLAWED

GTE's argument that carriers should not be permitted to opt into interconnection agreements that are no longer cost-based because it would be inconsistent with the Commission's Rule and the Act's requirements defies logic.[5] GTE's argument boils down to this — GTE believed it would receive compensation for originating calls and not have to compensate competitive LECs for terminating many calls. Now, because the state commissions have decided that calls to ISPs require the payment of termination compensation to competitive LECs, GTE and the other incumbent LECs want to argue that the rates are not "cost-based." This interpretation cannot be sustained. A rate is not rendered non-cost-based simply because a party had not anticipated remitting additional compensation for another service. As such, GTE's miscalculation of payments versus account receivables should not dictate whether or not it is willing to comply with a contractual obligation. Even assuming GTE's arguments were tenable, there is nothing in the 1996 Act or the Commission's Rules that requires that interconnection agreements or provisions of interconnection agreements only be available as long as they are cost-based.

GTE's Petition does not demonstrate that it qualifies for any exemption under the Commission's Rules.[6] In this regard, the Commission requires incumbent LECs to make publicly-filed agreements available to carriers only when they "cause the incumbent LECs to incur no greater costs than the carrier who originally negotiated the original agreement with the

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[5] Petition at 4.

[6] 47 C.F.R. § 51.809(b).

incumbent LEC."[7] Section 809(a) of the Commission's Rules, therefore, does not relieve incumbent LECs of their obligation to make available approved interconnection agreements to other requesting carriers if the agreement is no longer cost-based. To the contrary, section 809 relieves incumbent LECs from making interconnection agreements available only to carriers who would cause the incumbent LEC to incur greater costs than the carrier who originally negotiated the interconnection agreement. GTE makes no attempt to argue this position -- no doubt because it cannot be substantiated.

Additionally, a change of law is not justification for GTE's failure to provide pick and choose. Indeed, most contracts accommodate a change of law. The concept of pick and choose is simple: a requesting LEC gets what the original LEC gets from GTE. Otherwise, there will exist discriminatory treatment between the original contracting carrier and the carrier that has adopted the agreement. Just as competitive LECs must honor a change in law that is unfavorable to them, such as the Eighth Circuit's vacation of the Commission's pick and choose rule, so must GTE.

Moreover, GTE's interpretation of the law would be subject to much abuse by incumbent LECs. For example, particular rates have been negotiated, the incumbent LEC could later rescind that obligation for certain carriers, arguing that its costs of providing the associated interconnection, element or service were no longer cost-based. Using the increased rates received from these carriers, incumbent LECs could subsidize "sweetheart" deals to affiliates or other favored carriers. The Commission sought to prevent such discrimination with its "pick and

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[7] Local Competition Order, ¶ 1317.

choose" rule.[8]

## III. INCUMBENT LECS RIGHTFULLY OWE COMPETITIVE LECS COMPENSATION FOR ISP-BOUND TRAFFIC

GTE's claim that it does not recover its costs of originating ISP traffic from its own end user customers is not a matter for this Commission.[9] GTE does indeed receive corresponding revenue from its customers. If GTE's subscribers are generating additional costs on the originating side for which GTE needs recovery, that is a local rate issue. LEC origination rates and costs are completely irrelevant to LEC termination rates and costs. GTE's concern about the costs of originating ISP traffic are irrelevant to competitive LECs' costs of transporting and terminating calls on behalf of incumbent LECs. Furthermore, incumbent LECs have significant flexibility to decide when and how to provide ISP-bound services, such as Internet access via additional lines. The costs of originating ISP traffic are far from fixed.

Moreover, it is not the case that "GTE's interconnection agreements do not include Internet traffic within the definition of local traffic or subject such traffic to reciprocal compensation obligations."[10] Interestingly, states that considered this issue has either determined that the interconnection agreement does include ISP-bound traffic, or has reached this conclusion through arbitration.

ISP-bound traffic does not mean incumbent LECs will incur any greater costs than the transport and termination of other end user local exchange traffic. When LECs deliver traffic to

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[8] Local Competition Order, ¶ 1317.

[9] Petition at 5 ("ISP-bound traffic causes ILECs to incur millions of dollars in costs with no corresponding revenues. . . . it does not take much usage for the reciprocal compensation payments to dwarf the flat fee the originating customer pays the ILEC.).

[10] Petition at 7.

end users that are ISPs, those LECs incur the same transport and termination costs that are incurred when delivering local exchange traffic to other end users. GTE has not demonstrated that the costs of terminating calls to ISPs are different than the costs of terminating calls to other end users. Indeed, the Commission has stated that "a minute is a minute," and that "applying separate regulatory regimes . . . with divergent requirements to parties using essentially the same equipment to transmit and route traffic is undesirable in light of the new paradigm created by section 251."[11] Because the same local network infrastructure is used to terminate calls, the same costs should be incurred.

ISPs are just like other end users that receive telecommunications, such as call centers, ticket service providers, or hotel reservation lines, which all have significant inbound traffic. A distinction between classes of end users would be patently discriminatory. Moreover, the difficulty and cost in measuring and segregating voice an data traffic also warrants using the local voice rate as the same rate for ISP traffic.[12] Given that there are no differences in costs incurred in transporting and terminating ISP traffic vis-a-vis other local exchange traffic, reciprocal compensation rates for ISP traffic are justified.

## IV. THE COMMISSION HAS ALREADY DETERMINED THAT THE ILECS' TANDEM RATES CAN BE USED AS PROXIES FOR RECIPROCAL COMPENSATION

GTE essentially claims that, in order to receive reciprocal compensation for the transport and termination of ISP-bound traffic, competitive LECs must have the same end office or tandem

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[11] Local Competition Order, ¶ 46.

[12] MCI WorldCom is unaware of any technically feasible way of distinguishing between voice bits and data bits in an increasingly packetized telecommunications field.

architecture as the incumbent LECs.[13] This is not at all the case.

The Commission has already determined that "[w]here the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate."[14] The issue, therefore, is not whether the competitive LEC owns a tandem, but whether its network, through the use of a switch, terminates at a location similar to the incumbent LEC's tandem-served territory.

Furthermore, GTE cannot justifiably challenge the tandem rate because it is based on the incumbent LECs' own proxy rates. The Commission concluded that it was "reasonable to adopt the incumbent LEC's transport and termination prices as a presumptive proxy for other telecommunications carriers' additional costs of transport and termination."[15] Because incumbent and competitive LECs would be providing service in the same geographic area, the Commission concluded that the forward-looking economic costs should be similar.[16] The Commission also found that such an approach was consistent with section 252(d)(2)'s requirement "that costs be determined 'on the basis of a reasonable approximation of the additional costs of terminating such calls.'"[17]

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[13] Petition at 8.

[14] Local Competition Order, ¶ 1090.

[15] Id., ¶ 1085.

[16] Id.

[17] Id.

## V. ILECS SHOULD MAKE INTERCONNECTION AGREEMENTS AVAILABLE TO REQUESTING CARRIERS AS LONG AS THE ORIGINAL LEC RECEIVES IT

GTE claims that competitive LECs should not be able to perpetuate the payment of reciprocal compensation ordered by state commissions based on an erroneous interpretation of federal law that is inconsistent with the market-based approach of the Commission's ISP Compensation Notice.[18] Rather, MCI WorldCom believes that competitive LECs should be entitled to the provisions of an interconnection agreement for at least as long as the original LEC receives it.

## CONCLUSION

For the foregoing reasons, MCI WorldCom's urges the Commission to deny GTE's Petition.

Respectfully submitted,

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[18] Inter-Carrier Compensation for ISP-Bound Traffic, *Notice of Proposed Rulemaking*, CC Docket No. 99-68 (rel. Feb. 26, 1999).

## Certificate of Service

I, Lonzena Rogers, do hereby certify, that on Monday, May 17, 1999, I have caused to be served by first class United States Postage a true copy of the foregoing Comments on the following:

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